United Nations S/2005/535

Security Council

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Letter dated 8 August 2005 from the Secretary-General addressed to the President of the Security Council

I write further to the informal consultations held by the Security Council in June 2005 concerning the letters of credit raised against the United Nations Iraq Account.

It will be recalled that at that time concerns were expressed by a number of Council members regarding the administrative processes associated with the expiration of letters of credit, as well as the processing of authentication documents by the relevant authorities.

At that time it was indicated that the matter required further study with regard to both the financial and administrative aspects and the appropriate interpretation of the legal authority available to me for satisfying the requirements of resolution 1483 (2003), in which the Council called for the termination of the ongoing operations of the oil-for-food programme.

A careful examination of the situation has revealed a need to balance concern for the timely termination of the programme against the need for an orderly treatment of the requirements of both vendor and purchaser. Since most of the letters of credit have already expired, action is required immediately so as to avoid any disruption of the delivery of essential goods and services to Iraq.

Given the urgency of these issues, I recommend your positive consideration of my proposals. In the absence of any objection by the Council, the matter of reinstating or extending letters of credit will be handled as detailed in the attached note, which outlines my intentions and proposals for terminating operations relating to the letters of credit raised against the United Nations Iraq Account.

Implementation of my proposals will go a long way towards advancing the ongoing efforts to re-establish conditions of normality in Iraq.

(*Signed*) Kofi A. **Annan**

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Annex

Note on the arrangements for terminating the operations relating to the letters of credit raised against the United Nations Iraq Account

1. In my report to the Security Council (S/2003/640) dated 11 June 2003, I advised that the letters of credit issued by the bank for the United Nations Iraq Account (maintained at BNP Paribas) for the purchase of humanitarian supplies for the south/centre of Iraq would continue to be handled by the United Nations beyond 21 November 2003, the date established under resolution 1483 (2003) for the termination of the ongoing operations of the "oil-for-food" programme and the transfer of responsibility for the administration of any remaining activity under the programme to the Coalition Provisional Authority.

2. I would now like to provide the Council with an update on the situation of the letters of credit that continue to be maintained by the bank and to propose a specific course of action for the Council's consideration in relation to the ongoing management of those letters of credit, so that the termination of the oil-for-food programme can be continued in an orderly manner.

3. At 31 July 2005 funding was being retained for the 549 letters of credit that were reported by the bank as being "open". The details of those letters of credit were:

Expiration period	*Number of letters of credit*
Expired by 31 December 2004	249
Expired during the period 1 January-31 July 2005	253
To expire during the period 1 August-31 December 2005	33
To expire during 2006	12
To expire during 2007	2
Total	**549**

4. While the normal practice for the programme has been to close a letter of credit 90 days after expiry, because of the difficulties being encountered in the processing of the authentication documents which are required for payment to be made to the vendor, funding has been retained in the United Nations Iraq Account for the expired letters of credit. This is because the United Nations Secretariat has cause to believe that deliveries were made during the validity period of the letters of credit, and is awaiting receipt, from the Government of Iraq, of the authentication documents.

5. The Council is requested to urge the responsible authorities to promptly process the authentication documents so that payment can be made according to the terms and conditions of the letter of credit. The processing of authentication documents should not be delayed on account of commercial disputes, which should be handled in accordance with normal commercial practice. Consistent with past and

current practice, the United Nations will not be an arbitrator. Any subsequent payments in favour of the purchaser should be made only to the United Nations Iraq Account according to the procedures developed by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait pursuant to paragraph 12 of resolution 986 (1995).

6. To overcome the difficulties being experienced in the processing of authentication documents, I have decided that, in the absence of any objection by the Council, the matter of reinstating or extending letters of credit will be handled as detailed in paragraphs 7 to 9 below.

Letters of credit that had expired by 31 December 2004

7. The cash collateral supporting the 249 letters of credit that had expired by 31 December 2004 will continue to be retained in the United Nations Iraq Account until 30 November 2005 to allow payment to be made to vendors should authentication documents confirming that the goods were delivered during the validity period of the letter of credit be received by 30 November 2005. This represents a potential reinstatement of 249 letters of credit, but does not constitute an extension of the validity period of any of those letters of credit beyond 31 December 2004. Should authentication documents not be received by 30 November 2005, the letters of credit will be closed and the associated cash collateral released for transfer to the Development Fund for Iraq, in accordance with paragraph 17 of resolution 1483 (2003).

Letters of credit expiring in 2005

8. Should the United Nations receive a formal request from the Government of Iraq by 31 October 2005, arrangements will be made to have any of the 286 letters of credit expiring in 2005 reinstated or extended for up to 10 months from the current expiry date. Letters of credit for which no such request is made will be retained for 90 days after expiry (this reflects the normal grace period that has been allowed over the course of the programme) and will then be closed.

Letters of credit due to expire in 2006 and 2007

9. No reinstatements or extensions will be made for the 14 letters of credit that are due to expire in 2006 and 2007. Those letters of credit will be retained for 90 days after expiry and will then be closed.

10. The options detailed above provide sufficient time for the resolution of any commercial disputes that have delayed the processing of authentication documents, and for the Government of Iraq to resolve any other matters that hitherto have prevented the timely issue of the requisite authentication documents.

Additional related situations

11. There are two additional related situations that I would like to bring to the attention of the Council. The first is the 23 cases where the letter of credit had been closed in accordance with the normal practice, as the United Nations Secretariat had no knowledge of the delivery of the goods to Iraq, but now authentication documents have been received, well after the standard 90-day grace period.

12. As the problem has arisen principally because of a delay in the submission of the authentication documents, I propose that, in the absence of any objection by the Council, the vendors be paid in a one time only exception to the "general rules" proposed above for expired letters of credit.

13. The second additional situation relates to 17 cases where the bank has closed the letters of credit, but the United Nations Secretariat has reason to believe that deliveries were made during the validity period of the letters of credit and continued to reserve funding for those cases. In the absence of any objection by the Council, this funding will continue to be reserved until 30 November 2005. Should authentication documents be submitted by that date, the letters of credit will be reinstated and payment made to the vendor. Should authentication documents not be received by 30 November 2005, the funding will be released.

14. A detailed schedule of the 549 open letters of credit and the 40 cases referred to in paragraphs 11 and 13 above can be made available upon request. All other letters of credit previously raised under the oil-for-food programme that are not included in the schedule of the 549 open letters of credit or that are not related to the 40 cases will be considered closed and no action will be taken in their regard.

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Letter dated 19 August 2005 from the President of the Security Council addressed to the Secretary-General

I have the honour to inform you that your letter dated 8 August 2005 (S/2005/535), concerning the termination of operations relating to letters of credit raised against the United Nations Iraq Account, has been brought to the attention of the members of the Security Council. They welcome the arrangements that you propose in order to balance concern for the timely termination of the oil-for-food programme against the need for an orderly treatment of the requirements of both vendor and purchaser. The members of the Council emphasize that it is essential that the remaining work be done in close consultation with the relevant authorities of the Government of Iraq. Bearing in mind the timetable envisaged in the note annexed to your letter, they request you to report orally to the Security Council on the implementation of the above-mentioned arrangements by mid-October 2005, so as to allow the members of the Council to assess the progress made, and review the arrangements.

(*Signed*) Kenzo **Oshima**
President of the Security Council

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